

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 79 of 2005 (S/B)

Jagmohan Singh Chauhan,
S/o Late Sri Sabbal Singh,
Serving as Project Manager,
District Project Management Unit, 'Swajal' Project,
Uttarkashi. Petitioner

Versus

1. Secretary,
Payjal Vibhag, Uttaranchal Shasan,
Dehradun /
Vice Chairman,
Project Management Unit, 'Swajal' Project,
Uttaranchal, Dehradun.
2. Director,
Project Management Unit, 'Swajal' Project,
Uttaranchal, Dehradun.
3. Sri Vijay Pal Singh Sajwan,
Member of Legislative Assembly
Gangotri Legislative Constituency, Uttarkashi,
R/o Model Colony, Dehradun /
Adyaksh, Rajya Aapda Rahat Samiti,
Govt. of Uttaranchal, Dehradun. Respondents

Mr. Manoj Tewari, Advocate for the petitioner.

Mr. J.P. Joshi, Addl. Chief Standing Counsel for the State of Uttaranchal.

Coram: Hon. Cyriac Joseph, C.J.

Hon. M.M. Ghildiyal, J.

ORAL JUDGMENT: (Per Hon'ble the Chief Justice)

1. The petitioner is serving as Project Manager, District Project Management Unit, Swajal Project, Uttarkashi. He was posted in the present post as per order dated 13.10.2004 of the second respondent Director, Project Management Unit, Swajal Project, Uttaranchal, Dehradun. He is aggrieved by Annexure 12 order passed by the second respondent transferring him from Uttarkashi to Dehradun even before completing one year at the present station. Though it is stated in Annexure 12 Order that the transfer is in public interest, the petitioner alleges that the transfer was ordered due to the undue influence and pressure exerted by the third respondent on the second respondent. The third respondent is the Member of Legislative Assembly from Gangotri Legislative Constituency. The petitioner

prays for quashing the impugned transfer order dated 10.05.2005 issued by the second respondent. The petitioner also has sought stay of operation of the impugned transfer. The petitioner has pointed out that no regular substitute has been posted in the place of the petitioner and an officer at Sri Nagar is directed to hold additional charge of the post held by the petitioner. According to the petitioner, he has not yet been relieved from the post of Project Manager, District Project Management Unit, Swajal Project, Uttarkashi,

2. We have heard Mr. Manoj Tewari, learned counsel for the petitioner and Mr. J.P. Joshi, learned Additional Chief Standing Counsel for the State of Uttaranchal who accepted notice for respondents No. 1 and 2. In the nature of the order we propose to pass in this case, it is not necessary to issue notice to respondent No. 3.

3. The impugned order is an administrative order passed by the second respondent. In the normal course, the High Court will not interfere with such orders in exercise of the jurisdiction under Article 226 of the Constitution of India unless it is shown that the order is clearly without jurisdiction or arbitrary or malafide. Having regard to the facts and circumstances of the case, we do not consider it necessary to adjudicate on the legality or validity of the impugned transfer order. The impugned order is passed by the second respondent. There is a higher administrative authority above the second respondent who can look into the grievances of the petitioner and redress his grievances, if they are found to be genuine and valid. In the normal course, the petitioner should have approached the first respondent Government against the order passed by the second respondent. Though learned counsel for the petitioner submitted that the petitioner was constrained to approach this Court directly in view of the allegations of malafide raised against the third respondent, we are of the view that since the allegation is that the second respondent was influenced by the third respondent, the petitioner need not have any inhibition to approach the first respondent for redressal of his grievance. We are not expressing any opinion as regards the basis or foundation for the allegations made against the third respondent. It is

for the first respondent to consider such allegations, if any, raised by the petitioner before the first respondent. We have no reason to assume that if the petitioner has a genuine grievance and a legal objection to the impugned transfer, the first respondent will not consider the same and redress his grievances. It is when the executive fails or refuses to redress the grievances of its employees that the Court is constrained to step-in. Any responsible Government will take care to prevent such a situation. Hence, we are inclined to allow the petitioner to make a representation to the first respondent against the impugned transfer. Since no regular substitute has been posted in the place of the petitioner and since the petitioner claims that he has not been relieved so far, we are also inclined to direct the respondents to keep the impugned order in abeyance till the petitioner's representation is disposed of by the Government.

4. Hence, the writ petition is disposed of with the following directions:

- i. If the petitioner makes a representation to the first respondent against the impugned transfer, the first respondent shall consider the representation and pass appropriate orders in accordance with law as expeditiously as possible.
- ii. Till the disposal of such representation submitted by the petitioner, respondents No. 1 & 2 are directed to keep in abeyance the impugned transfer ordered as per Annexure 12.
- iii. If the petitioner fails to make a representation within one week from today, the writ petition will stand dismissed and it will be open to the respondents to implement Annexure 12 Order.

(M.M. Ghildiyal, J.)
17.05.2005

(Cyriac Joseph, C.J.)
17.05.2005